



**Billing Code:** 7515-01U

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1275**

**[FDMS No. NARA-16-0004; NARA-2016-019]**

**RIN 3095-AB86**

**Nixon Administration Presidential historical materials**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Direct final rule.

**SUMMARY:** NARA is amending this regulation to update provisions in accord with recent developments, including completed processing of the five chronological tape segments, as required by section 6 of the *Kutler* settlement agreement. The changes are primarily administrative and focus on changes to certain access and notice provisions currently in the regulations, as well as minor word and sentence changes in line with Plain Language Act provisions. Because NARA has completed the requirements of the *Kutler* Settlement agreement, we are removing it as an appendix to this part.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action, unless NARA receives adverse comments by [INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If NARA receives an adverse comment, it will publish a timely withdrawal of the rule in the Federal Register.

**ADDRESSES:** You may submit comments on this rule, identified by RIN 3095-AB86, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for

submitting comments.

- *Email:* Regulation\_comments@nara.gov. Include RIN 3095-AB86 in the subject line of the message.
- *Mail (for paper, disk, or CD-ROM submissions):* Send comments to: Regulations Comments Desk (External Policy Program, Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.
- *Hand delivery or courier:* Deliver comments to front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

**FOR FURTHER INFORMATION CONTACT:** For information or questions about the regulation and the comments process, contact Kimberly Keravuori, External Policy Program Manager, by email at regulation\_comments@nara.gov, or by telephone at 301.837.3151.

**SUPPLEMENTARY INFORMATION:**

Regulatory analysis

Review under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule is not “significant” under section 3(f) of Executive

Order 12866 because it proposes to make only minor administrative revisions. The Office of Management and Budget (OMB) has reviewed this regulation.

Review under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rule will not have a significant adverse economic impact on small entities because it makes only minor administrative changes to the rule and the rule governs how people may access these records, which does not impact small entities.

Review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Review under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, this regulation does not require a Federalism assessment.

**List of Subjects in 36 CFR part 1275.**

Access, Information, Presidential records.

For the reasons stated in the preamble, NARA revises 36 CFR part 1275 to read as follows:

**PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE  
PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION**

Sec.

**Subpart A — General Provisions**

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- 1275.14 Legal custody.
- 1275.16 Definitions.

**Subpart B — Preserving and Protecting Materials**

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- 1275.22 Security.

**Subpart C — Special Access to Materials**

- 1275.30 Access by designees or assignees of former President Nixon.
- 1275.32 Access by Federal agencies.
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**Subpart D —Public Access to Materials**

- 1275.42 Processing.
- 1275.44 Segregating and reviewing.
- 1275.46 Transfer of private or personal materials.
- 1275.48 Restriction of materials related to abuses of governmental power.
- 1275.50 Restriction of materials of general historical significance unrelated to abuses of governmental power.
- 1275.52 Periodic review of restrictions.
- 1275.54 Appeal of restrictions.
- 1275.56 Deleting restricted portions.
- 1275.58 Requests for declassification.
- 1275.60 Freedom of information Act (FOIA) requests.

Authority: 44 U.S.C. 2104, 2111 note.

**Subpart A — General Provisions**



### **§ 1275.1 Scope and purpose.**

This part implements title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) with respect to the Presidential historical materials of the Richard M. Nixon Administration (covering the period beginning January 20, 1969, and ending August 9, 1974). This part applies to all Nixon Presidential historical materials in the custody of the Archivist of the United States pursuant to the PRMPA, and prescribes policies and procedures by which the National Archives and Records Administration (NARA) preserves, protects, and provides access to them.

### **§ 1275.14 Legal custody.**

The Archivist of the United States has or will obtain exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of title I of the Presidential Recordings and Materials Preservation Act.

### **§ 1275.16 Definitions.**

As used in part 1275, the following definitions apply:

(a) *Presidential historical materials.* The term *Presidential historical materials* (also referred to as *historical materials* and *materials*) means all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory powers or duties as President and retained or appropriate for

retention as evidence of or information about these powers or duties. Included in this definition are materials relating to the political activities of former President Nixon or members of his staff, as well as matters relating to President Nixon's private political associations that have no connection with the constitutional or statutory powers or duties of the President or a member of his staff. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience or reference when they are clearly so identified.

(b) *Private or personal materials.* The term *private or personal materials* means those papers and other documentary or commemorative materials in any physical form relating solely to the personal and family issues of President Nixon, his family, and his friends and that have no connection with his constitutional or statutory powers, or duties of the President or any member of the President's staff. (Materials relating to private political associations, including matters relating to the Republican Party and election campaigns, that have been donated to NARA by the Richard Nixon Library and Birthplace Foundation pursuant to a 2007 deed of gift are excluded from this definition.)

(c) *Abuses of governmental power popularly identified under the generic term "Watergate."* The term *abuses of governmental power popularly identified under the generic term "Watergate"* (also referred to as *abuses of governmental power*), means those alleged acts, whether or not corroborated by judicial, administrative, or legislative proceedings, which allegedly were conducted, directed, or approved by President Richard M. Nixon, his staff, or persons associated with him in his constitutional or statutory functions as President, or as

political activities directly relating to or having a direct effect upon those functions, and which:

(1) Were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or

(2) Are described in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93-1305.

(d) *General historical significance.* The term *general historical significance* means having administrative, legal, research, or other historical value as evidence of or information about the constitutional or statutory powers or duties of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term *Archivist* means the Archivist of the United States or the Archivist's designated agent. The term *archivist* means an employee of NARA who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term *agency* means an executive department, military department, independent regulatory or non-regulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President. For purposes of § 1275.32 only, the term *agency* also includes the White House Office.

(g) *Staff.* The term *staff* means those people whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council; who were detailed on a non-



reimbursable basis to the White House Office or Domestic Council from any other Federal activity; who otherwise were designated as assistants to the President, in connection with their service in that capacity; or whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(h) *Classified national security information.* The term *classified national security information* means any matter which is designated as classified under applicable law, or under E.O. 13526, Classified National Security Information (December 29, 2009), or its successors.

## **Subpart B — Preserving and Protecting Materials**

### **§ 1275.20 Responsibility.**

The Archivist is responsible for the preservation and protection of the Nixon Presidential historical materials.

### **§ 1275.22 Security.**

The Archivist is responsible for providing adequate security for the Presidential historical materials, and for establishing access procedures.

## **Subpart C — Special Access to Materials**

### **§ 1275.30 Access by designees or assignees of former President Nixon.**

In accordance with subpart B of this part, former President Richard M. Nixon's designated or assigned agent(s) at all times have access to Presidential historical materials in the custody and control of the Archivist.

#### **§ 1275.32 Access by Federal agencies.**

In accordance with subpart B of this part, any Federal agency in the executive branch has access for lawful Government use to the Presidential historical materials in the custody and control of the Archivist to the extent necessary for ongoing Government business. The Archivist will consider only written requests from heads of agencies or departments, deputy heads of agencies or departments, or heads of major organizational components or functions within agencies or departments.

#### **§ 1275.34 Access for use in judicial proceedings.**

In accordance with subpart B of this part, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Archivist will be made available for use in any judicial proceeding and are subject to subpoena or other lawful process.

### **Subpart D — Public Access to Materials**

#### **§ 1275.42 Processing.**

The archivists will conduct archival processing of all closed materials to prepare them for public access. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owners in accordance with § 1275.46. In conducting such archival processing, the archivists will restrict portions of the materials pursuant to §§ 1275.48 and 1275.50. All materials will be prepared for public access and released subject to restrictions or outstanding claims or petitions seeking such

restrictions.

**§ 1275.44 Segregating and reviewing.**

(a) During the processing period described in § 1275.42, the Archivist will assign archivists to segregate private or personal materials, as defined in § 1275.16(b). The archivists have sole responsibility for the initial review and determination of private or personal materials. At all times when the archivists or other authorized officials have access to the materials in accordance with these regulations, they will take all reasonable steps to minimize the degree of intrusion into private or personal materials. Except as provided in these regulations, the archivists or other authorized officials will not disclose to any person private or personal or otherwise restricted information learned as a result of their activities under these regulations.

(b) During the processing period described in § 1275.42, the Archivist will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in § 1275.16(c), nor otherwise having general historical significance, as defined in § 1275.16(d). The archivists have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in § 1275.42, the Archivist will assign archivists to segregate materials subject to restriction, as prescribed in §§ 1275.48 and 1275.50. The archivists have sole responsibility for the initial review and determination of materials that should be restricted. The archivists insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification includes a brief

description of the restricted material and the basis for the restriction as prescribed in §§ 1275.48 and 1275.50.

**§ 1275.46 Transfer of private or personal materials.**

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to Richard Nixon's heirs or to the former staff member who created the materials having primary proprietary or commemorative interest in the materials, or to their heir, designee, or assignee. Such materials include all segments of the original tape recordings that have been or will be identified as private or personal.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, will upon such transfer no longer be deemed Presidential historical materials as defined in § 1275.16(a).

**§ 1275.48 Restriction of materials related to abuses of governmental power.**

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 1275.16(c), when:

- (1) Ordered by a court;
- (2) The release of the materials would violate a Federal statute; or
- (3) The materials are authorized under criteria established by executive order to be kept secret in

the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification will be resolved in accordance with the applicable executive order or as otherwise provided by law.

(b) However, the Archivist may waive these restrictions when:

(1) The requester is engaged in a historical research project; *or*

(2) The requester is a former Federal official who had been appointed by President Nixon to a policymaking position and who seeks access to only those classified materials which he originated, reviewed, signed, or received while in public office; *and*

(3) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; *and*

(4) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; *and*

(5) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(c) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided*, That if material related to an abuse of governmental power refers to, involves, or incorporates such personal

information, the Archivist will make available such personal information, or portions thereof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

**§ 1275.50 Restriction of materials of general historical significance unrelated to abuses of governmental power.**

(a) The Archivist will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in §1275.48(a).

(b) The Archivist will also restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source who furnished information on a confidential basis, and in the case of a record compiled by a criminal law enforcement authority in the course

of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished by a confidential source;

(v) Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Endanger the life or physical safety of any individual.

#### **§ 1275.52 Periodic review of restrictions.**

The Archivist periodically will assign archivists to review materials placed under restriction by § 1275.48 or § 1275.50 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction.

#### **§ 1275.54 Appeal of restrictions.**

The Nixon Presidential Library controls the Nixon Presidential historical materials. Upon petition of any researcher who claims in writing to the library director that the restriction of specified materials is inappropriate and should be removed, the archivists will submit the pertinent materials, or representative examples of them, to the library director. The library director reviews the restricted materials, and consults with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside NARA, the library director will comply with the requirements of § 1275.32. As necessary and practicable, the library director will also seek the views of any person whose rights or privileges might be adversely affected by a decision to open the materials. The library director prepares a final written decision as to the continued restriction of all or part of the

pertinent materials. The library director's decision constitutes the final administrative determination. The library director will notify the petitioner and other interested people of the final administrative determination within 60 calendar days following receipt of such petition.

**§ 1275.56 Deleting restricted portions.**

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after NARA deletes the portions which are restricted under § 1275.48 or § 1275.50.

**§ 1275.58 Requests for declassification.**

Challenges to the classification and requests for the declassification of national security classified materials are governed by the provisions of 36 CFR part 1256, subpart E, as that may be amended from time to time.

**§ 1275.60 Freedom of Information Act (FOIA) requests.**

(a) The Archivist will process Freedom of Information Act (FOIA) requests for access to only those materials within the Presidential historical materials that are identifiable by an archivist as records of an agency as defined in § 1275.16(f). The Archivist will process these requests in accordance with the FOIA regulations set forth in 36 CFR part 1250, NARA Records Subject to FOIA.

(b) In order to allow NARA archivists to devote as much time and effort as possible to the processing of materials for general public access, the Archivist will not process those FOIA requests where the requester can reasonably obtain the same materials through a request directed to an agency (as defined in § 1275.16(f)), unless the requester demonstrates that he or she has



unsuccessfully sought access from that agency or its successor in law or function.

Dated: March 2, 2016

David S. Ferriero,  
Archivist of the United States.

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